

DEVELOPMENT AGREEMENT

This Agreement is entered into this the 1 day of February, 2002, by and between the CITY OF COLLEGE STATION, TEXAS, a Texas Home-Rule Municipal Corporation (hereinafter referred to as the "City"), and FOUR AGS INVESTMENTS, LP, a Texas limited partnership (hereinafter referred to as "Developer").

WHEREAS, Developer represents that it has entered into a contract to purchase the tract of land from Edsel Jones which is depicted and described on the plat attached hereto as Exhibit "A" (hereinafter referred to as "Property") zoned R-5 - Apartments; and

WHEREAS, the Developer is required to dedicate additional right-of-way for Jones Butler Road and construct the right-of-way with an offset for oversize participation from the City; and

WHEREAS, City is willing to accept Developer's financial participation for its share of the cost to construct Jones Butler Road and use these funds in its capital project to construct the total length of Jones Butler Road together with the portion of Jones Butler Road that fronts on the Property; and

WHEREAS, the parties have agreed to enter into this Agreement so that Developer plat the Property. The preliminary plat was approved by the Planning and Zoning Commission of the City of College Station on January 3, 2002; and

NOW THEREFORE, for and in consideration of the recitations above, and in consideration of the promises and covenants herein expressed, the parties hereby agree and covenant as follows:

1. **DEVELOPER'S OBLIGATIONS.** Subject to Developer closing its acquisition of the Property, Developer agrees as follows:

- a. Developer agrees to dedicate and convey to the City in fee simple by plat additional right-of-way for Jones-Butler Road upon, over and across the Property. The area of right-of-way dedications described in Exhibit "B" attached hereto and made a part hereof. If the Property has been previously conveyed to the City at the time the final plat is before the Planning and Zoning Commission for approval, Developer agrees to reflect such right-of-way dedication area on its final plat; and
- b. In accordance with CHAPTER 9 OF THE CITY OF COLLEGE STATION CODE OF ORDINANCES, prior to the approval of a final plat, Developer shall remit or cause to be remitted to the City the sum of \$37,015 as a deposit in the form of a certified check or wire transfer to pay for the impact of its development less oversize participation by the City on Jones-Butler Road which is adjacent to the Property. This amount represents the Developer's engineer estimate of 50% of the cost plus a 10% contingency of a 28' street. Payment will be due and owing ten business days from the date of the invoice. The City agrees to accept the estimated cost plus contingency as payment in full for Developer's obligation to construct the portion of Jones-Butler Road along the frontage of the Property. City agrees to waive any assessment against the Property for the initial construction of Jones-Butler Road but not any subsequent widening or repaving.
- c. If Developer does not purchase this property on or before the date on which the preliminary plat expires, this Agreement shall terminate and neither party shall have any further rights or liability hereunder.

2. **GOVERNING LAW.** It is understood that this Agreement shall be governed by, and construed and enforced in accordance with, and subject to, the laws of the State of Texas. The parties agree that performance of this Agreement shall take place in Brazos County, Texas, and that venue shall lie in the court of competent jurisdiction in Brazos County, Texas.

3. **BINDING EFFECT.** It is understood and agreed that this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

4. **Assignment.** Developer may not assign this Agreement without the express written consent of the City.

5. **INDEMNIFICATION, GOVERNMENTAL IMMUNITY AND RELEASE**
INDEMNITY

DEVELOPER AGREES TO AND SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL REASONABLE EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, FOR DAMAGE TO ANY PROPERTY, FOR ANY BREACH OF CONTRACT, OR ITS FAILURE TO ABIDE BY ALL APPLICABLE ENVIRONMENTAL LAWS, RULES AND REGULATIONS ARISING OUT OF OR IN CONNECTION WITH THIS DEVELOPMENT AGREEMENT.

GOVERNMENTAL IMMUNITY

DEVELOPER AGREES AND ACKNOWLEDGES THAT PLATTING IS A GOVERNMENTAL FUNCTION AND THAT BY ENTERING INTO THIS AGREEMENT THE CITY IS ENGAGED IN CARRYING OUT A GOVERNMENTAL FUNCTION. IN THIS CONNECTION, THE PARTIES AGREE AND UNDERSTAND THAT IN THE PERFORMANCE OF ALL MATTERS RELATING TO THIS AGREEMENT AND EXECUTING THIS AGREEMENT THE CITY DOES NOT WAIVE ITS GOVERNMENTAL IMMUNITY NOR DOES THIS AGREEMENT CONSTITUTE THE CITY'S CONSENT TO SUIT.

RELEASE

DEVELOPER HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON (WHETHER EMPLOYEES OF EITHER PARTY OR OTHER THIRD PARTIES) AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY (WHETHER PROPERTY OF EITHER OF THE PARTIES HERETO, THEIR EMPLOYEES, OR OF THIRD PARTIES) THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THIS DEVELOPMENT AGREEMENT AND THE DEVELOPMENT OF THE PROPERTY. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE, AND IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE DEVELOPER, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PREMISES. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY.

6. **ENTIRE AGREEMENT.** It is understood that this Agreement contains the entire agreement between the parties and supersedes all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated unless in writing and agreed to by both parties. The parties agree that they have read the terms of this Agreement and familiarized themselves with the requirements hereunder and agree that they understand their rights and responsibilities hereunder.

7. **AUTHORITY.** The City and Developer each state that they are each authorized to sign this Agreement.

8. **TIME.** Time is of the essence. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays and Texas legal banking holidays. In the event the date for performance of any obligation hereunder shall fall on a Saturday,

Sunday or Texas legal banking holiday, then that obligation shall be performable the next following regular business day.

9. **SEVERABILITY.** If any of the terms and conditions hereof shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such validity, illegality, or unenforceability shall not affect any other of the terms and conditions hereof and the terms and conditions hereof shall thereafter be construed as if such invalid, illegal, or unenforceable terms and conditions had never been contained herein.

10. **COUNTERPARTS.** This Agreement may be executed in any number of identical counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all counterparts hereof taken together shall constitute but a single instrument.

11. **PRESUMPTION CONCERNING INTERPRETATION.** This Agreement shall not be construed more strictly against one party against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all of the parties to this Agreement have contributed substantially and materially to the preparation of this Agreement.

12. **FURTHER ASSURANCES.** In connection with this Agreement as well as all transactions contemplated by this Agreement, each signatory party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and all such transactions.

13. **RECITALS.** Any recitals in this Agreement are represented by parties hereto to be accurate, and constitute a part of the substantive agreement.

Dated this the _____ day of _____, 2002.

CITY OF COLLEGE STATION

ATTEST:

Connie Hooks, City Secretary

By: _____

Lynn McIlhaney, Mayor

FOUR AGS INVESTMENT, LP,
a Texas Limited Partnership

By: FOUR AGGIE INVESTMENTS, LLC
a Texas limited liability company
General Partner

By: _____


Hunter Goodwin, Member

THE STATE OF TEXAS §

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ACKNOWLEDGMENT

COUNTY OF BRAZOS §

Before me, the undersigned authority, on this day personally appeared LYNN McILHANEY, as Mayor of the CITY OF COLLEGE STATION, a Texas home rule municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the _____ of _____, 2002.

Notary Public in and for the
State of Texas

THE STATE OF TEXAS §

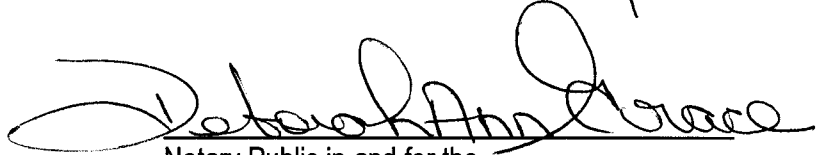
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ACKNOWLEDGMENT

COUNTY OF BRAZOS §

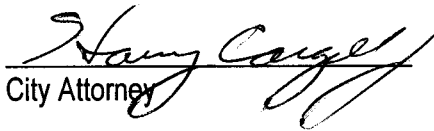
Before me, the undersigned authority, on this day personally appeared Hunter Goodwin, as a member of Four Aggie Investments, LLC., a Texas Limited Liability Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 1 of February, 2002.



Notary Public in and for the
State of Texas

APPROVED:


City Attorney